

In the Matter of )  
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Annual Assessment of the Status of ) MB Docket No. 05-255  
Competition in the Market for the )  
Delivery of Video Programming )

Cincinnati Bell Inc. (together with its subsidiaries, “Cincinnati Bell”)<sup>1</sup> submits these comments in response to a number of questions and issues raised by the Commission in its August 12, 2005 Notice of Inquiry.<sup>2</sup> As it is currently preparing to launch a competitive video offering over an updated digital subscriber line network, Cincinnati Bell is particularly interested in sharing its views with respect to incumbent local exchange carrier (“ILEC”) entry into the multichannel video programming distributor (“MVPD”) market.

Cincinnati Bell is preparing to launch an Internet Protocol (“IP”)-based video service (generally referred to as “IPTV”) offering to its residential subscriber base

<sup>2</sup> See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry, MB Docket No. 05-255, FCC 05-155 (August 12, 2005) (“Notice of Inquiry”).

over an upgraded digital subscriber line (“DSL”) network.<sup>3</sup> As such, Cincinnati Bell is pursuing a fiber-to-the node (“FTTN”) strategy similar to that described by SBC Communications Inc. with respect to its “Project Lightspeed.”<sup>4</sup>

In preparation for a commercial launch of IPTV services, Cincinnati Bell’s ILEC subsidiary, Cincinnati Bell Telephone Company LLC (“CBT”) is currently upgrading its existing DSL infrastructure in order to provide the requisite bandwidth to support a full-scale, switched video product throughout its existing operating area. The programming itself, however, will be obtained and distributed by a separate subsidiary, Cincinnati Bell Entertainment Inc. (“CBE”). CBE, which is currently negotiating agreements with multiple programming providers, plans to offer hundreds of channels of programming and digital music, video on demand (“VOD”), personal video recorders (“PVRs”), an interactive programming guide (“IPG”), and high definition television (“HDTV”). Cincinnati Bell also intends to offer several additional features to its video subscribers upon the launch of the service including voicemail access as well as caller ID notification via the television. Cincinnati Bell will continue to provide customers with high-speed data services and voice services on an integrated basis over the same network. Once the facility upgrades have been made, Cincinnati Bell will be capable of transmitting video and

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<sup>3</sup> While Cincinnati Bell initially plans to offer video services to its residential consumers only, Cincinnati Bell anticipates expanding the availability of the product to business consumers in the future.

<sup>4</sup> Notice of Inquiry at ¶ 55. While Cincinnati Bell will be using a FTTN strategy similar to SBC’s Project Lightspeed, Cincinnati Bell will be using asymmetrical digital subscriber line or ADSL 2+ standard rather than very-high-bit-rate DSL or VDSL standard as SBC has indicated it intends to do.

other programming to the nodes located throughout the network (and closer to the customer premises), which will be further be distributed from the nodes to end-users over existing copper plant.

Simultaneous with its network upgrades, Cincinnati Bell has selected some vendors and is currently participating in lab trials with a number of other vendors whose products and services are specific to a video offering, including vendors for middleware, encoders, VOD servers, headend equipment, and set-top boxes (“STBs”). If the lab trials and subsequent field trials continue to be successful, Cincinnati Bell currently anticipates a commercial launch to take place during the second half of 2006.

#### **IP Delivery Provides Enhanced Flexibility Over Existing Video Platforms**

Cincinnati Bell believes that it will achieve sufficient bandwidth to deliver high-quality video services which are not only comparable to but superior to the services currently available from cable and satellite providers today. Because Cincinnati Bell is using an IP platform for delivery, the number of channels that are available to consumers is greatly expanded. With IPTV, all of the available channels will be stored on a network node and will be delivered to end users using a switched, two-way system. Rather than all channels being delivered to all homes all the time, each channel is delivered to a customer individually only upon the customer’s selection of a particular channel or program. Each time a customer chooses a different channel, the customer’s STB sends a request to the network node and the node sends the new channel in response. Thus, each time a customer

surfs up and down the channels, the customer is interacting or communicating with the network node to request delivery of the channels one by one. In this way, delivery of the customer's channel choice is much like accessing a Website on one's computer, albeit instantaneously.

Because Cincinnati Bell transmits only the channel requested by a specific customer rather than a constant stream of all available channels set to every home as with cable service, Cincinnati Bell believes that it will be able to offer customers greater flexibility and individualization than is available today through incumbent cable and satellite systems. Cincinnati Bell envisions that there will be many more interactive features to IPTV in the not-so-distant future including email access on the TV, viewing Web sites customized for TV usage and, ultimately, real-time interaction with a viewer's favorite game, news, or sports programming. In addition, because delivery of IPTV will be integrated with other IP-based services provided over the same network, e.g. Internet access, components are being formed so that a customer will be able to obtain additional information, on-demand, about the program viewed such as sports statistics, more detail about a news story, instructions for a do-it-yourself project, the weather for a specific location, up-to-date traffic conditions, etc. The greater flexibility and expanded number of channels and programming available over an IP platform have the potential,

therefore, to make for a very different user experience than is available over traditional cable and DBS systems today.<sup>5</sup>

### **Barriers to Entry Into the Video Market**

Cincinnati Bell is excited about the opportunity to bring much needed competition to the video marketplace of greater Cincinnati. In the face of competition from incumbent cable companies in the voice market, Cincinnati Bell is also eager to round out its service offerings to provide customers with complete bundles of voice, wireless, data, and video services. In fact, Cincinnati Bell's own market research suggests that many customers are looking for alternatives to the cable and satellite services available today and that they would consider buying all of their communications and video services from Cincinnati Bell if possible. Despite its willingness to invest millions of dollars to bring IPTV to its customers and customers' interest in having an alternative video provider, however, Cincinnati Bell potentially faces two significant barriers to entry into the video market—franchise requirements imposed by local franchising authorities (“LFAs”) and the cost of acquiring programming as a new entrant. Cincinnati Bell separately addresses each potential obstacle to its provision of IPTV services below.

#### **Local Franchise Requirements**

While the issue will properly be addressed in the Commission's pending IP rulemaking proceeding,<sup>6</sup> Cincinnati Bell takes this opportunity to assert that the

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<sup>5</sup> While Cincinnati Bell's IP-based video service will be capable of providing interactive on-demand functionality, Cincinnati Bell's ability to provide such interactivity to subscribers is dependent upon the distribution agreements it reaches with content owners and other programming vendors.

two-way interactive component inherent to the IP delivery model, as explained above, removes IPTV from the definition of a “cable service” provided over a “cable system” as those terms are defined by Title VI of the Communications Act of 1934 (“the Act”), as amended. Therefore, because Cincinnati Bell’s IPTV services are not “cable service,” Cincinnati Bell is not subject to the franchising requirements imposed upon cable providers under Title VI.<sup>7</sup> However, to avoid the possibility that LFAs will attempt to require franchise agreements or threaten to block Cincinnati Bell’s introduction of the service to its customers if Cincinnati Bell does not obtain a cable franchise, Cincinnati Bell urges the Commission to use its authority to clarify that IPTV services, as described, are not subject to the franchise requirement under 47 U.S.C. § 541(b)(1) and associated franchise-related regulations.

Assurance that IPTV service will be free from franchise requirements is crucial to Cincinnati Bell’s successful and timely rollout of its IPTV services by the second half of 2006 for several reasons. Cincinnati Bell believes that requiring it to negotiate franchise agreements with each of the more than 50 LFAs in its traditional operating area will be both burdensome and time consuming, particularly given the limited resources of Cincinnati Bell as well as the LFAs themselves. Reaching an agreement with each LFA prior to the planned launch,

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<sup>6</sup> See IP-Enabled Services, Notice of Proposed Rulemaking, WC Docket No. 04-36 (March 10, 2004).

<sup>7</sup> See 47 U.S.C. §§ 522(5)-(7), 541(b)(1). With respect to this contention, Cincinnati Bell agrees with SBC Communications Inc.’s recent ex parte filing, “The Impact and Legal Propriety of Applying Cable Franchise Regulation to IP-Enabled Video Services,” filed on September 14, 2005, in WC Docket No. 04-36.

even in Cincinnati Bell's confined three-state operating area, may be a near impossible task, requiring Cincinnati Bell to either delay a commercial launch entirely until all franchise agreements have been finalized or roll out service on a locality-by-locality basis as agreements are signed. Neither is a tenable choice from Cincinnati Bell's perspective. In order for its IPTV launch to be successful, Cincinnati Bell must be able to launch the service throughout the majority if not all of its operating area at once in order to realize the greatest return on its capital and marketing investments.

Cincinnati Bell also seeks to avoid the need for franchises because of the various requirements some LFAs have required of franchisees in order to operate in their jurisdictions. Particularly troublesome for Cincinnati Bell are the build-out requirements that have become so prevalent in franchise agreements governing incumbent cable providers. Cincinnati Bell's objection to such build-out requirements is based on both practical and policy considerations. As indicated above, Cincinnati Bell is currently upgrading its existing DSL facilities to allow for video services to be delivered to most customers. However, as a practical matter, Cincinnati Bell's ability to provide video service to an individual customer will be based, foremost, on the location of its existing network. Cincinnati Bell may not be able to serve all of the customers in a given LFA's jurisdiction given the fact that Cincinnati Bell's network and the LFA's jurisdictional boundaries may not match. There will undoubtedly be customers in a LFA's jurisdiction who are outside of Cincinnati Bell's traditional operating area and to whom Cincinnati Bell cannot

provide service. Secondly, Cincinnati Bell's ability to provide video service to a particular customer within a LFA's jurisdiction will be a function of the condition of the facilities serving that customer and the distance of the customer from the network node. Given technical limitations inherent in a DSL-based deployment, Cincinnati Bell may not be able to provide video service to certain customers (even though those customers can receive high-speed data services) without undertaking prohibitively costly upgrades to the system. As it does today, Cincinnati Bell should be able to make a decision about whether to extend video service to a particular customer in its operating area on both operational and economic considerations rather than on a LFA's political boundaries.

From a policy perspective, it has long been acknowledged that a key premise for the cable franchise requirement is the management and use of the public rights-of-way. Because Cincinnati Bell's DSL infrastructure already occupies the public-right-of-way, Cincinnati Bell is currently subject to specific franchise requirements and/or numerous permitting requirements related to accessing the public rights-of-way. There is no reasonable basis for requiring Cincinnati Bell to obtain a separate franchise in order to provide video services over its existing DSL infrastructure. The fact that Cincinnati Bell is distributing a new type of data over its DSL network—video programming—does not change the fact that LFAs already have the tools necessary to manage the public right-of-way. Moreover, there will be no greater burden on the public right-of-way, where the infrastructure—the DSL network—is already in place to provide video service to end-users.



Finally, the Commission should reject the notion that LFAs need franchise agreements in order to ensure that they treat incumbent cable providers and new entrants evenhandedly. As the Commission is aware, local franchise requirements came about when cable providers were given a monopoly to provide cable service throughout a LFA jurisdiction. There is no reason to subject a new entrant to the video market (much less the third or fourth video provider in a market) to the legacy entry requirements imposed upon incumbent monopoly providers. Just as the Commission has concluded that voice over IP providers should not be subject to state and local entry requirements, Cincinnati Bell encourages the Commission to find that video over IP should be free from such barriers to entry as well. Only by doing so can the Commission achieve the goal of lowering the barriers faced by new entrants to a market so that customers will have a new competitive choice—IPTV—in the video market.

#### Access to Programming

As stated earlier, Cincinnati Bell's subsidiary, CBE, will be the entity that acquires and distributes programming to end-users over CBT's upgraded DSL network. CBE is currently pursuing multiple avenues to acquire, aggregate and deliver linear, VOD, and interactive programming in order to obtain the programming necessary to offer a full-scale competitive video offering to subscribers. Over the coming months, CBE hopes to enter into affiliate programming agreements, retransmission consent agreements, and studio

distribution agreements in order to have the full spectrum of programming for its IPTV offering.

As a new entrant as well as small regional provider, however, CBE faces a distinct challenge in obtaining the necessary programming to make its IPTV offering competitive—the ability to acquire programming at a cost per subscriber that does not jeopardize the overall economic viability of launching a video offering. While Cincinnati Bell has not been denied access to specific programming as an individual entity, Cincinnati Bell is actively exploring multiple consortium programming aggregation strategies as potential options for acquiring linear, VOD and interactive content. Cincinnati Bell will also explore opportunities to distribute multi-platform content with major and independent programmers.

So, while *access* to programming is not an issue for Cincinnati Bell at this time, Cincinnati Bell uses this opportunity to inform the Commission that the *cost* of such programming may serve as a barrier to entry into the video market by small IPTV providers. In addition to obtaining competitive pricing for programming, Cincinnati Bell hopes that it will be able to obtain reasonable channel carriage and program tiering flexibility from major programming providers to assemble a distinct competitive offering. Without reasonable per subscriber costs for programming as well as carriage and tiering flexibility, Cincinnati Bell and other small IPTV providers will not be able to offer differentiated programming packages, pricing options, and bundled services to achieve long-term penetration against the incumbent cable or satellite providers. Thus, Cincinnati Bell asks the Commission

to encourage programming providers and distributors to work cooperatively with *all* video providers, including IPTV providers, in order to fundamentally change the way consumers are able to view video programming in the future.

## **CONCLUSION**

Today, Cincinnati Bell is investing millions of dollars of capital and working aggressively to bring much needed competition to the video market in its three-state regional operating area. However, in order for customers to realize the benefits of this competition, the Commission must take affirmative action to clarify that IPTV is not subject to the franchise requirements that may stop the introduction of the new service in its tracks. Likewise, the Commission should actively encourage programming providers to work cooperatively with IPTV providers to ensure that they and their customers will have access to the full panoply of programming, at reasonable rates, that is available through other video distribution technologies today. Only then, will end-users have the opportunity to enjoy the innovative, interactive services and functionalities that are made possible by the delivery of video over an IP platform.

Respectfully submitted,

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September 19, 2005